U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-S-S-, INC.

DATE: DEC. 21, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, which describes itself as an IT-based engineering and business solutions company, seeks to employ the Beneficiary as vice president of engineering services. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner did not establish that the Beneficiary had the requisite educational degree to qualify for the job offered, and also did not establish its ability to pay the proffered wage of the job offered. The Petitioner filed a motion to reopen and reconsider. The Director granted the motion, but affirmed his denial of the petition on the grounds set forth in the original decision.

The matter is now before us on appeal. The Petitioner has submitted a letter and additional documentation. Upon *de novo* review, we will dismiss the appeal.

I. PROCEDURAL HISTORY

The Form I-140, Immigrant Petition for Alien Worker, was filed on October 30, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the U.S. Department of Labor (DOL) on March 9, 2015, and certified by the DOL on September 18, 2015. In section G of the labor certification, the Petitioner stated that the proffered wage for the job offered is $168,000 per year. In section H of the labor certification the Petitioner stated that the minimum requirements to qualify for the job offered are a master's degree in business administration, software engineering, or a related field of study, or a foreign educational equivalent, plus 60 months of experience in the job offered or in a related occupation.

As evidence of the Petitioner's ability to pay the proffered wage, the Petitioner submitted copies of the following documentation with its Form I-140 and in response to the Director's notice of intent to deny (NOID) the petition:

- The Petitioner's IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for 2014;
- The Petitioner's unaudited profit and loss statement for the period of January to September 2015;
- The Petitioner's monthly statements from in for a business checking account it held during the period of February 27 to September 30, 2015;
- An unaudited profit and loss statement for for the period of May to September 2015;
- Monthly checking account statements from in for three business accounts held by during 2015.

As evidence of the Beneficiary's education and experience, the Petitioner submitted copies of the following documents:

- A degree and statement of marks from in India showing that the Beneficiary was awarded a bachelor of engineering (B.E.) in mechanical engineering on January 23, 1996, after completion of a 4-year degree program in 1994.
- A marks sheet and provisional certificate from the in India showing that the Beneficiary had completed four semesters of study in a master of business administration (MBA) degree program, passed the final examination in 1997, and was awarded a provisional certificate on April 6, 1999.
- Letters from five former employers describing the Beneficiary's prior experience and job duties during the years 2000-2011.

On November 25, 2015, the Director denied the petition on two grounds. First, the Director found that the record did not establish that the Beneficiary satisfies the educational requirement in the labor certification because the provisional certificate from the does not indicate that an MBA degree was actually conferred upon the Beneficiary. The Director concluded, therefore, that the evidence did not indicate that the Beneficiary qualifies for the job offered. Second, the Director found that the Petitioner did not establish its ability to pay the Beneficiary the proffered wage. The Director noted that the Petitioner's federal income tax return for 2014 recorded negative figures for net income and net current assets. The Director also discussed – a company, like the Petitioner, which is wholly owned by the – and held that the financial assets of the other separate company could not be considered in determining the Petitioner's ability to pay the proffered wage. The Director rejected the Petitioner's claim that because its employees, including the Beneficiary, are paid interchangeably from the business accounts of the Petitioner and that assets must be considered in the ability to pay analysis based on U.S. corporate law that allows reverse piercing of the corporate veil. The Director concluded that regardless of the fact that was wholly owned by the Petitioner's president, it had no legal obligation to pay the proffered wage owed by the Petitioner.

[1] The Petitioner's statements raise questions as to which entity will actually be the Beneficiary's employer. The Petitioner must address this concern in any future filings.

On December 28, 2015, the Petitioner filed a motion to reopen the proceeding with regard to the Beneficiary's education and a motion to reconsider the decision with regard to the Petitioner's ability to pay the proffered wage. Along with the motions, additional evidence was submitted of the Beneficiary's courses in his MBA program and a brief addressing the issue of the Petitioner's ability to pay the proffered wage. The brief reiterated the Petitioner's claim that the assets of – the Petitioner's sole owner's second corporation – should not be excluded in the ability to pay analysis because is a financial vehicle used as needed to pay the Petitioner's employees. The Petitioner asserts that it and should be considered the "alter ego" of the Petitioner's president, because they are both 100% owned by are part of a single business enterprise, and their assets are equally accessible to pay the proffered wages(s) of the Beneficiary and other employees of the Petitioner. In the Petitioner's view, therefore, the assets of must be taken into account in determining the Petitioner's ability to pay the proffered wage of the job offered.

In a decision dated March 1, 2016, the Director granted the motion(s) to reopen and reconsider, but affirmed his denial of the petition. With regard to the Beneficiary's education, the Director noted that the record still lacked a copy of an MBA degree granted to the Beneficiary, restated his previous determination that a provisional certificate is not acceptable evidence that a degree has been granted, and concluded that the record did not establish that the Beneficiary is qualified for the job offered. With regard to the Petitioner's ability to pay the proffered wage, the Director once again rejected the Petitioner's claim that the assets of should be considered just because they could be intermingled with those of the Petitioner's business operations. The Director cited *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980), and *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003), which held that in determining a petitioner's ability to pay the proffered wage the assets of its shareholders or other enterprises or corporations could not be considered. The Director also found that no evidence of unusual circumstances had been submitted, or that the year the instant petition was filed, 2015, was uncharacteristically unprofitable, so as to justify a finding that the Petitioner has the ability to pay the proffered wage based on the totality of its circumstances, as in *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l. Comm'r 1967).

The Petitioner filed a timely appeal on April 4, 2016, together with a letter from counsel and additional documentation, which includes a copy of the Beneficiary's MBA degree from the dated March 18, 2000, and copies of the Petitioner's federal income tax returns, Forms 1120S, for 2013 and 2015. The Petitioner also resubmitted its NOID response and motion brief, along with previously referenced bank statements and other materials.

II. LAW AND ANALYSIS

A. Beneficiary Does Not Possess the Education Required for the Offered Position

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The terms "advanced degree" and "profession" are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. [The occupations listed in section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."]

Therefore, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Furthermore, an "advanced degree" is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least 5 years of progressive experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i). In this case, Part H of the labor certification sets forth the following minimum requirements for the proffered position of vice president of engineering services:

4.	Education: Minimum level required:	Master's degree
4-B.	Major Field of Study:	Business Administration
5.	Training:	None required
6.	Experience in the Job Offered:	60 months
7.	Alternate Field of Study:	Acceptable
7-A.	What Field(s) of Study	Software Engineering or related
8.	Alternate Combination of Education and Experience:	Not acceptable
9.	Foreign Educational Equivalent:	Acceptable
10.	Experience in an Alternate Occupation:	Acceptable
10-A.	How many months:	60 months
10-B.	What job title(s);	Related

Thus, the labor certification requires a master's degree, or a foreign equivalent degree, in business administration, software engineering, or a related field, and 60 months of experience as a vice

president of engineering services, or in a related occupation. No other combination of education and experience is listed as acceptable.

At issue is whether the Beneficiary has the required master's degree in business administration, software engineering, or a related field. According to the labor certification, the Beneficiary completed an MBA from the in India, in 1997. As noted, on appeal, the Petitioner submitted a copy of the MBA degree, as requested by the Director. The record now includes copies of two academic degrees and associated marks showing that the Beneficiary has academic degrees from two Indian universities, including (1) a B.E. in Mechanical Engineering from issued on January 23, 1996, after completion of a 4-year degree program, and (2) an MBA from the issued on March 18, 2000, after completion of a 2-year degree program.

The Petitioner has submitted an evaluation of the Beneficiary's academic credentials by dated March 12, 2008. referenced the coursework in the 4-year B.E. program and concluded that the Beneficiary's B.E. from is equivalent to a bachelor of science in mechanical engineering from an accredited U.S. college or university. then stated that enrollment in the MBA program was "based on the completion of university level studies" and an entrance examination. After citing the courses taken by the Beneficiary in the 2-year MBA program concluded that the Beneficiary's degree from the is equivalent to an MBA from an accredited university in the United States.

In reviewing the evaluation, we note that it does not assert, nor provide evidence, that admission to the MBA program at the required a 4-year bachelor's degree, which is the standard length of a bachelor's degree program at a U.S. college or university. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). describes the entrance requirement for the MBA program at the as "the completion of university level studies," which in India could include a 3-year bachelor's degree, or even a 2-year bachelor's degree. Thus, the evaluation indicates that a student may enroll in the MBA program with only 2 or 3 years of university education, which casts doubt on evaluation of the MBA as equivalent to a master's level degree in the United States.

Evaluations of academic and other credentials by credentials evaluation organizations are utilized by U.S. Citizenship and Immigration Services (USCIS) as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, we determine that the has little probative value. It is not persuasive evidence that the Beneficiary's MBA from the in India is equivalent to an MBA from an accredited university in the United States.

As another resource to assess the U.S. equivalency of the Beneficiary's MBA, we consulted the Educational Database for Global Education (EDGE), created by the American Association of

Collegiate Registrars and Admissions Officers (AACRAO).[2] We consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.[3]

In its section on India, EDGE has an entry for MBA, which states that it is awarded upon completion of 2 years of study beyond the 3-year bachelor's degree and represents a level of education which is comparable to a bachelor's degree in the United States. The EDGE "credential author notes" further state that the entry requirement for an MBA degree program is the completion of a 3-year bachelor's degree. According to EDGE, therefore, the Beneficiary's MBA from the is comparable to a U.S. bachelor's degree, not a U.S. master's degree.

While we note that the Beneficiary completed a 4-year bachelor's degree before entering the MBA program, rather than the 3-year program usually required for admission, the Beneficiary's extra year of study prior to entering the MBA degree program does not affect the U.S. equivalence of the MBA, because the entrance requirement for the MBA program was only a 3-year, not a 4-year, bachelor's degree. The Beneficiary's 4-year B.E. from therefore, does not raise the U.S. equivalency of the 2-year MBA he subsequently earned at the Accordingly, the MBA remains equivalent to a U.S. bachelor's degree.

Based on the foregoing discussion, we conclude that the Beneficiary does not have a U.S. master's degree in business administration, software engineering, or a related field of study, or the foreign equivalent degree, as is required to satisfy the minimum educational requirement of the labor certification. Accordingly, the Beneficiary does not meet the terms of the labor certification.[4]

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[2] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." AACRAO, http://www.aacrao.org/homea/about (last accessed December 5, 2016). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." ACRAO EDGE, http://edge.aacrao.org/info.php (last accessed December 5, 2016).

[3] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

[4] The labor certification states the requirements of the offered position as a U.S. master's degree or foreign equivalent degree and 5 years of experience in the job offered or a related occupation. The Petitioner did not allow for any alternate combination of education and experience. The Beneficiary must meet the minimum requirements of the job offered, as they are stated on the labor certification.

B. Petitioner's Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) provides, in pertinent part, as follows:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records may be submitted by the petitioner or requested by the Service.

Thus, the Petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the labor certification application was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is March 9, 2015.

The Petitioner must establish that its job offer to the Beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any immigrant petition later based on that labor certification, the Petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the Beneficiary obtains lawful permanent residence. The Petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the Petitioner to demonstrate financial resources sufficient to pay the Beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will also be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. at 612.

In determining the Petitioner's ability to pay the proffered wage, USCIS first examines whether the Beneficiary was employed and paid by the Petitioner during the period following the priority date. If the Petitioner establishes by documentary evidence that it employed the Beneficiary at a salary equal to or greater than the proffered wage, the evidence is considered *prima facie* proof of the Petitioner's ability to pay the proffered wage.

In this case, although the Petitioner claims on the labor certification to have employed the Beneficiary since December 1, 2014, and the record includes a copy of an employment agreement between the Petitioner and the Beneficiary, dated December 8, 2014; no evidence has been submitted of any wages paid to the Beneficiary. Therefore, the Petitioner has not established its ability to pay the proffered wage from the priority date of March 9, 2015, up to the present based on

the wages actually paid to the Beneficiary.[5] If the Petitioner does not establish that it has paid the Beneficiary an amount at least equal to the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures entered on the Petitioner's federal income tax return(s). If either of these figures equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the Beneficiary in a given year, the Petitioner would be considered able to pay the proffered wage during that year. There is ample judicial precedent for determining a petitioner's ability to pay the proffered wage based on its federal income tax returns. *See e.g. Elatos Restaurant Corp. v. Sava*, 632 F.Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Togatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)).

In the Petitioner's Form 1120S for 2015, the Petitioner's net income figure was $14,968[6] and its net current assets figure was -$364,578.[7] Thus, the Petitioner had net current liabilities in 2015, and net income that was far less than the proffered wage of $168,000 per year. Accordingly, the Petitioner has not established its continuing ability to pay the proffered wage from the priority date of March 9, 2015, onward based on its net income or net current assets.

As previously mentioned, the record includes an unaudited profit and loss statement for the period of January to September 2015 which states that the Petitioner's net income during this period was $69,311.03. The Petitioner's reliance on unaudited financial records is misplaced. As the regulation at 8 C.F.R. § 204.5(g)(2) makes clear, when a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. In this case, there is no accountant's report accompanying the Petitioner's profit and loss statement. Therefore, we cannot conclude that the statement is audited. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate a petitioner's ability to pay the proffered wage.

As for the Petitioner's business checking account with in reliance on these funds as evidence of its ability to pay the proffered wage is also misplaced. Bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While the regulation allows additional evidence "in appropriate cases," the Petitioner has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) – specifically, its federal income tax return for 2015 – paints an

[5] The absence of any evidence of payments to the Beneficiary raises questions as to whether the Petitioner has actually employed the Beneficiary since December 2014, as claimed in the labor certification and the employment agreement, and whether it actually intends to permanently employ the Beneficiary in the job offered, as claimed in the letter from its president, dated October 22, 2015, that accompanied the filing of the petition. In any further proceedings before USCIS the Petitioner should submit documentary evidence that it has employed and paid the Beneficiary since December 2014.

[6] If an S corporation's income is exclusively from a trade or business, USCIS considers its net income (or loss) to be the figure for "Ordinary business income (loss)" on page 1, line 21 of the Form 1120S. However, if there are relevant entries for additional income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K of the Form 1120S, and the corporation's net income or loss will be found in line 18 (income/loss reconciliation) of Schedule K.

[7] For a corporation net current assets (or liabilities) are the difference between the its current assets, entered on lines 1-6 of Schedule L, and its current liabilities, entered on lines 16-18 of Schedule L.

inaccurate financial picture of the Petitioner that year. Bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. No evidence has been submitted to demonstrate that the funds reported on the Petitioner's bank statements reflect additional funds that were not reflected on its tax return for 2015, such as the taxable income (income minus deductions) or the cash specified on Schedule L.[8]

The Petitioner asserts that the assets of – the other company wholly owned by its president, – should also be taken into account in our ability to pay determination. We do not agree. As the Director already indicated in his decision, quoting the federal district court decision in *Sitar v. Ashcroft*, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." is a separate and distinct legal entity from the Petitioner. While the Petitioner points to entries in the business bank accounts of showing that withdrawals were sometimes made to pay the Petitioner's employees, no evidence has been submitted to show that is legally obligated to make those payments. The Petitioner has not submitted any contract or other agreement between it and which defines a working relationship between the two entities and establishes a legal obligation for to pay the salaries of the Petitioner's employees. Accordingly, the assets of will not be considered in determining the Petitioner's ability to pay the proffered wage of the job offered in this proceeding.[9]

USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612. USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of its net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the petitioner's reputation within its industry, the overall number of employees, whether the beneficiary is replacing a former employee

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[8] In any event, the monthly account balances were minimal in many months– from $3360.29 on February 27, 2015; to $42,050.20 on March 31, 2015; to $15,088.13 on April 30, 2015; to $5.24 on May 29, 2015; to $2381.02 on June 30, 2015; to -$78.86 on July 31, 2015; to $440.81 on August 31, 2015; to $1109.13 on September 30, 2015. These balances were clearly insufficient to pay the monthly portion of the proffered wage on a continuing basis. Accordingly, the statements are not persuasive evidence of an additional financial resource that the Petitioner could have utilized to pay the proffered wage to the Beneficiary.

[9] Even if we did consider the assets of for the sake of argument, the only evidence concerning financial position in the record is the unaudited profit and loss statement from 2015 and the account statements from in also from 2015. Because the profit and loss statement is unaudited, its claim that had net income of $104,392.79 from May to September 2015 has little evidentiary weight. As for the bank accounts, the monthly statements show that one had monthly balances ranging from $5,000.00 to $32,822.96 between May and September 2015; the second had monthly balances ranging from $150.00 to $13,286.35 in August and September 2015; and the third had monthly balances ranging from $150.00 to $10,072.15 between July and September 2015. There is no evidence that any of these accounts was in existence as far back as the priority date of March 9, 2015. Moreover, the time frames of the bank statements are far too limited to draw any conclusion about the financial resources of over time – in particular, from the priority date up to the present. Finally, as previously stated, bank accounts in general do not demonstrate a sustainable ability to pay a proffered wage.

or an outsourced service, the amount of compensation paid to officers, the occurrence of any uncharacteristic business expenditures or losses, and any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In this case, the Petitioner states that it was incorporated in May 2011 and had nine employees at the time the instant petition was filed in October 2015. Thus, the business does not have a long history. The record includes the Petitioner's federal income tax returns for the years 2013-2015, which recorded the following pertinent figures:[10]

Year	Gross Receipts	Net Income	Net Current Assets
2013	$1,639,196	-$70,044	-$422,139
2014	$1,212,616	-$29,415	-$230,364
2015	$ 580,840	$14,968	-$364,578

As shown in the tax returns, the Petitioner's gross receipts steadily declined from 2013 to 2015. These figures appear to indicate that the business is shrinking, not growing. After two years of net losses, the Petitioner recorded net income in 2015, but a modest amount of less than $15,000. The evidence of record, therefore, does not show an established pattern of growth. There is no evidence of the Petitioner's reputation within its industry, or the occurrence of any uncharacteristic business expenditures or losses. Based on the documentation of record, we determine that the Petitioner has not established that the totality of its circumstances, as in *Sonegawa*, demonstrates its ability to pay the proffered wage of $168,000 from the priority date of March 9, 2015, up to the present.

Therefore, the Petitioner has not established its continuing ability to pay the proffered wage of the job offered from the priority date up to the present.

III. CONCLUSION

Based on the evidence of record in this case, the Petitioner has not established that the Beneficiary has a U.S. master's degree in business administration, software engineering, or a related field, or the foreign degree equivalent, as required by the labor certification to qualify for the job offered. In addition, the Petitioner has not established its continuing ability to pay the proffered wage of $168,000 per year from the priority date of March 9, 2015, up to the present.

The petition will remain denied for the above-stated reasons, with each considered an independent and alternate ground of denial. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

[10] The 2013 and 2014 tax returns, which predate the year of the priority date, are considered only for a totality of the circumstances analysis.

ORDER: The appeal is dismissed.

Cite as *Matter of D-S-S-, Inc.*, ID# 22002 (AAO Dec. 21, 2016)